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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/690,817	10/23/2003	Yoshitaka Mishima	2038-303	5433
22429	7590	10/23/2006		
LOWE HAUPTMAN BERNER, LLP 1700 DIAGONAL ROAD SUITE 300 ALEXANDRIA, VA 22314			EXAMINER ANDERSON, CATHARINE L	
			ART UNIT 3761	PAPER NUMBER

DATE MAILED: 10/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/690,817

Applicant(s)

MISHIMA ET AL.

Examiner

C. Lynne Anderson

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 7/26/06 and 3/20/06.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 4-23 is/are pending in the application.
- 4a) Of the above claim(s) 11 and 16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-10,12-15 and 17-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election of Species I in the reply filed on 26 July 2006 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

### ***Response to Arguments***

Applicant's arguments filed 20 March 2006 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 14, 15, and 17-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lovret (3,532,093) in view of Ahlstrand et al. (6,183,458).

Lovret discloses all aspects of the claimed invention with the exception of the discharge containing portion containing absorbent material.

With respect to claims 14 and 20, Lovret discloses a disposable wearing article 10, as shown in figure 1, comprising a holder member 15 having a front waist region 13 a rear waist region 14, and a crotch portion 12. The holder member 15 has an upper surface and a lower surface, and a through-hole 40, as

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shown in figure 2. A receiving member comprises an annular portion 41 located on the upper surface of holder member 15. The receiving member further comprises a discharge containing portion 50, shown in figure 6, which is positioned below the lower surface of holder member 15 in compartment 16, as shown in figure 2.

Ahlstrand teaches the use of absorbent material in the discharge receiving portion of a disposable wearing article, as shown in figure 4, to absorb the liquid in the receiving portion. It would therefore be obvious to one of ordinary skill in the art at the time of invention to provide the receiving portion of Lovret with absorbent material, as taught by Ahlstrand, to absorb liquid.

With respect to claims 15 and 21, the discharge containment portion 50 is liquid impervious, as disclosed in column 3, lines 38-40, and enlargeable under the weight of discharge, as disclosed in column 3, lines 64-67.

With respect to claims 17 and 22, the discharge containing portion 50 has a top wall 52, a bottom wall (shown in figure 6 but not numbered), and a side wall 51. The absorbent material taught by Ahlstrand is upwardly spaced from the bottom wall by interval 8, as shown by Ahlstrand in figure 3.

With respect to claim 18, the annular portion 41 extends upwardly from the upper side of the top wall 51, as shown in figure 2.

With respect to claims 19 and 23, the annular portion 41 comprises a flexible and elastically compressible material, as disclosed in column 3, lines 35-37 and 3-15. The annular portion 41 has a height greater than the edge portion

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of the compartment 16 containing the discharge containing portion, as shown in figure 2.

Claims 1-2, 4-10, and 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lovret (3,532,093) in view of , and further in view of Tsuji et al. (6,808,516).

Lovret discloses all aspects of the claimed invention with the exception of the discharge containing portion containing absorbent material and the holder member having an X-shaped sheet.

With respect to claim 1, Lovret discloses a disposable wearing article 10, as shown in figure 1, comprising a holder member 15 having a front waist region 13 a rear waist region 14, and a crotch portion 12. The holder member 15 has an upper surface and a lower surface, and a through-hole 40, as shown in figure 2. A receiving member comprises an annular portion 41 located on the upper surface of holder member 15. The receiving member further comprises a discharge containing portion 50, shown in figure 6, which is positioned below the lower surface of holder member 15 in compartment 16, as shown in figure 2.

Tsuji teaches the use of a high elasticity segment 20 having an X-shape attached to a holder member 3 and 4, as shown in figure 5, to provide the article with a more secure, leak-proof fit, as disclosed in column 1, line 45, to column 2, line 8. It would therefore be obvious to one of ordinary skill in the art at the time

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of invention to provide the article of Lovret with the holder member having a high-elasticity segment of Tsuji to provide a more secure, leak-proof fit.

With respect to claim 2, the front and rear waist regions 13 and 14 are releasably engaged by fasteners 21, as shown in figure 1.

With respect to claim 4, the annular portion 41 comprises flexible and elastically compressible foamed plastic, as disclosed in column 3, lines 35-37 and 3-15.

With respect to claim 5, the discharge containment portion 50 is liquid impervious, as disclosed in column 3, lines 38-40, and enlargeable under the weight of discharge, as disclosed in column 3, lines 64-67.

With respect to claim 6, the holder member is fully capable of being washed and reused.

With respect to claims 7-10, the holder member, as modified by Tsuji, comprises a topsheet 3, a backsheet 4, and an X-shaped elastically stretchable sheet 20, as shown in figure 5. The X-shaped sheet 20 is bonded between the topsheet and backsheet, as disclosed by Tsuji in column 7, lines 20-24.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**.

See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent 6,840,925 discloses an elastically stretchable X-shaped member.

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Lynne Anderson whose telephone number is (571) 272-4932. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.


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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

WA

cla

October 13, 2006

  
JACQUELINE STEPHENS  
PRIMARY EXAMINER